

Special Civil Application No 3226 of 1988

Date of decision: 13/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Kamlaben Revandas Patel

vs.

Addl. Collector & Dy. Secretary, Revenue Dept. & Anr.

Appearance:

Shri P.V. Nanavati, Advocate, for the Petitioner

Shri D.N. Patel, Asst. Govt. Pleader, for the  
Respondents

Coram : MR.JUSTICE A.N.DIVECHA

#### ORAL JUDGEMENT

The order passed by the Additional Collector and Deputy Secretary, Revenue Department at Gandhinagar (respondent No.1 herein) on 15th January 1988 in exercise of the powers under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for brief) is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 1 declared the holding of the petitioner to be in excess of the ceiling limit by 4159 square meters after setting the order passed by the Competent Authority at Ahmedabad (respondent No. 2 herein) on 21st March 1983 under sec. 8(4) of the Act declaring the petitioner's holding to be

not in excess of the ceiling limit.

2. The facts giving rise to this petition move in a narrow compass. It appears that the father of the petitioner, named, Revabhai Purshottamdas Patel, held several properties within the urban agglomeration of Ahmedabad. He executed his will some time on or about 20th May 1968. It was registered in accordance with the law of registration. Its copy is at Annexure B to this petition. It appears that thereunder he bequeathed all his properties to the petitioner herein subject to the right of maintenance by his widow. It however appears that he disposed of certain properties during his lifetime prior to 1975 leaving with him some two parcels of land situated in village Wadaj and in village Ranip. He thereupon executed another testamentary document in modification of his earlier testamentary document popularly known as a codicil in the legal parlance. That was executed on 14th February 1975. Its copy is at Annexure C to this petition. Thereunder he bequeathed all his properties in favour of the petitioner and her sons and daughters in equal share. It appears that the testator died soon thereafter on 15th March 1975. On coming into force of the Act, the petitioner filed her declaration in the prescribed form under sec. 6(1) of the Act with respect to her holding within the urban agglomeration of Ahmedabad. That form was duly processed by respondent No. 2. After observing all formalities according to law, by his order passed on 22nd March 1983 under sec. 8(4) of the Act, respondent No. 2 came to the conclusion that the petitioner's holding was not in excess of the ceiling limit. Its copy is at Annexure D to this petition. It appears that it came to the notice of the concerned officer of the State Government. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was contemplated. Thereupon a show-cause notice came to be issued on 23rd October 1985 calling upon the petitioner to show cause why the order at Annexure C to this petition should not be revised. It was accompanied by an order of interim direction of even date directing the petitioner herein to maintain status quo with respect to the subject-matter of the order at Annexure C to this petition. Copies of the show-cause notice and the interim direction are at Annexure E (collectively) to this petition. The petitioner filed her reply thereto on 6th December 1985. Its copy is at Annexure F to this petition. After hearing the petitioner, by the order passed by respondent No. 1 on behalf of the State Government on 15th January 1988 under sec. 34 of the Act, the petitioner's holding was declared to be in excess of the ceiling limit by 4159 square meters and the matter was remanded to respondent No. 2 for preparation of the final statement after giving an opportunity to the petitioner for surrender of the excess land. Its copy is at Annexure G to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under Articles 226 and 227

of the Constitution of India for questioning the correctness of the order at Annexure G to this petition.

3. It appears that at the time of hearing respondent No. 1 insisted on production of the original codicil though its copy was produced before him. It is the case of the petitioner that at the time of hearing the original was shown to respondent No. 1 herein and it was compared with the copy on record but at the time of dictation of the order after one year from the date of hearing, respondent No. 1 appears to have forgotten about perusal of the original and its comparison with its copy on record. Be that as it may, the fact remains that the impugned order at Annexure G to this petition mentions about non-production of the original codicil at the time of hearing.

4. It appears that at the time of preliminary hearing of this petition this Court permitted the petitioner to institute proper proceedings within one month from the date of the order for obtaining the necessary documents pursuant to the will and the codicil after joining the State Government as a party defendant. In this case the petitioner's son has filed one affidavit on 11th March 1993 annexing therewith one order passed by Court No. 13 of the City Civil Court at Ahmedabad on 25th April 1990 in Civil Miscellaneous Application No. 764 of 1989 accepting the application of the petitioner herein for grant of letters of administration in respect of the will and the codicil executed by her father. Also annexed with the additional affidavit are copies of the letter of administration in the prescribed form together with a schedule on the stamp paper attached thereto a xerox copy of the codicil executed by the deceased on 14th February 1975 and a xerox copy of the original testamentary document. In view of grant of the letters of administration by the competent court, the codicil will be deemed to have been validly executed by the deceased father of the petitioner.

5. It transpires from a copy of the codicil at Annexure C to this petition that the properties belonging to the deceased have been bequeathed to the petitioner and her sons and daughters in all 7 in number in equal share. It needs no repetition or reiteration that the petitioner was the sole surviving daughter of the deceased at the relevant time and she is bequeathed the property by her father under the codicil as one of the seven sharers. Her share therein would therefore be the 1/7th thereof.

6. Since respondent No.1 herein has not found the codicil executed by the father of the petitioner to be genuine and since the City Civil Court at Ahmedabad has granted the letters of administration pursuant to the codicil in question finding it to be validly executed, its effect is required to be considered qua

the holding of the petitioner keeping in mind the definitions of "person" contained in sec. 2(i) of the Act and "family" contained in sec. 2(f) thereof. The matter will have therefore to be remanded to respondent No. 1 or his successor in office for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. The impugned order at Annexure G to this petition will have therefore to be quashed and set aside for the purpose.

7. In the result, this petition is accepted. The order passed by respondent No. 1 on 15th January 1988 at Annexure G to this petition is quashed and set aside. The matter is remanded to respondent No. 1 or his successor in office for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. By way of interim arrangement both the sides are directed to maintain status quo in terms of the interim relief granted by this Court by its order passed on 18th July 1988.

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